

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
CENTRAL PUGET SOUND REGION  
STATE OF WASHINGTON

GRAHAM MC, LLC,

Petitioner,

v.

PIERCE COUNTY,

Respondent.

**CASE No. 16-3-0005**

**ORDER DENYING STAY and  
EXTENDING DEADLINES**

This matter comes before the Board on the Joint Motion and Agreed Order For Extension Pursuant to RCW 36.70A.300(2)(b) and for Stay of Prehearing Order (Joint Motion) on September 19, 2016. The parties requested a 90-day extension of the final decision and order deadline and stay of the prehearing order deadline pending superior court decision. The matter was discussed at the Prehearing Conference on September 12, 2016. Where the parties are in agreement, the Board prefers to facilitate collaboration and did not indicate that a stay was unlikely. On further consideration of applicable law, the Presiding Officer finds no authority to support granting this request.

Accordingly, the joint motion for extension and for stay is **denied**.

**I. MOTION FOR STAY**

In consideration of the fact that the instant case challenges the County's compliance action take in response the Board's Final Decision and Order in *Summit-Waller, et al. v. Pierce County*, GMHB No. 15-3-0010c (FDO, May 9, 2016), which Graham MC, LLC (Graham) has appealed in Thurston County Superior Court,<sup>1</sup> the parties jointly request that

<sup>1</sup> Cause No.16-2-02276-34 filed June 8, 2016.

1 the Board consider a 90-day stay of the proceedings in the hope that resolution of the  
2 appeal in the prior case may settle issues in the instant case.<sup>2</sup>

### 3 4 **Applicable Law**

5 RCW 36.70A.300(2)(b)(i) allows the Presiding Officer to authorize one or more  
6 extensions of up to 90 days *when Board determines that a negotiated settlement between*  
7 *the parties could resolve significant issues* in dispute.

#### 8 **RCW 36.70A.270**

9 (7) All proceedings before the board, any of its members, or a hearing  
10 examiner appointed by the board shall be conducted in accordance with such  
11 administrative rules of practice and procedure as the board prescribes. The  
12 board shall develop and adopt rules of practice and procedure, including rules  
13 regarding expeditious and summary disposition of appeals and the  
14 assignment of cases to regional panels. The board shall publish such rules  
15 and decisions it renders and arrange for the reasonable distribution of the  
16 rules and decisions. *Except as it conflicts with specific provisions of this*  
17 *chapter, the administrative procedure act, chapter 34.05 RCW, and*  
18 specifically including the provisions of RCW 34.05.455 governing ex parte  
communications, *shall govern the practice and procedure of the board.*  
Emphasis added.

#### 19 **RCW 34.05.080 Variation from time limits.**

20 (1) An agency may modify time limits established in this chapter only as set  
21 forth in this section. ...

#### 22 **RCW 34.05.550, Stay and other temporary remedies.**

23 (1) Unless precluded by law, the agency may grant a stay, in whole or in part,  
24 or other temporary remedy.

25 **WAC 242-03-860 Stay**, provides in pertinent part:

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27 The board pursuant to RCW 34.05.550(1) may stay the effectiveness of a  
28 *final order* upon motion for stay.

29 **RCW 36.70A.330 Noncompliance**, provides in pertinent part:

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31 (2) The board shall conduct a hearing and issue a finding of compliance or  
32 noncompliance with the requirements of this chapter and with any compliance

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<sup>2</sup> Joint Motion (September 19, 2016).

1 schedule established by the board in its final order. .... A hearing under this  
2 subsection shall be given the highest priority of business to be conducted by  
3 the board ... .

#### 4 **Discussion**

5 In its *Summit-Waller* decision, the Board found that the County's extension of the  
6 northern boundary of the Local Area of More Intensive Development (LAMIRD) in the  
7 Graham Rural Activity Center (RAC) to add 13 acres to the LAMIRD<sup>3</sup> failed to minimize and  
8 contain more intensive development in the Graham LAMIRD and thus did not comply with  
9 the GMA. Graham appealed that decision in Thurston County Superior Court. When Pierce  
10 County enacted Ordinance 2016-34s (Compliance Action), which, *inter alia*, repealed the  
11 extension of the LAMIRD desired by Graham, Graham filed the instant challenge to  
12 Ordinance 2016-34s before the Board. Because the issues presented in Graham's Superior  
13 Court appeal of the Board's final decision and order in *Summit-Waller* are related to issues  
14 presented to the Board in this case, the parties argue that resolution of the Superior Court  
15 action may settle the issues in this case.<sup>4</sup>

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17 However, after Pierce County enacted Ordinance 2016-34s (Compliance Action) in  
18 order to comply with the Board's remand of Ordinance 2015-40, Pierce County filed a  
19 motion for an expedited compliance hearing with the Board.<sup>5</sup> "A hearing under this  
20 subsection shall be given the highest priority of business to be conducted by the board."  
21 RCW 36.70A.330, Noncompliance. Therefore, the Board held an expedited compliance  
22 hearing and issued an Order on Compliance on October 5, 2016, in which it found Pierce  
23 County's Compliance Action brings the County into compliance with the GMA as to the  
24 logical outer boundary and area of the Graham LAMIRD. Thus, the Superior Court could  
25 find Petitioner's appeal moot rather than resolving the issues presented in this case.  
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<sup>3</sup> Ordinance 2015-40.

<sup>4</sup> *Id.* at 1.

<sup>5</sup> *Summit-Waller Community, et al. v. Pierce County*, GMHB No. 15-3-0010c and Coordinated Case No. 12-3-0002c (Pierce County's Motion for Expedited Compliance Hearing, June 30, 2016).

Regardless, the Board does not believe it has the statutory authority to grant this request. Under RCW 36.70A.270(7), the Board is governed by the APA *except as it conflicts with specific provisions of RCW 36.70A*. RCW 36.70A.300, Final Orders, provides:

(2)(a) Except as provided in (b) of this subsection, *the final order shall be issued within one hundred eighty days of receipt of the petition for review, ...*

(b) The board *may extend the period of time for issuing a decision to enable the parties to settle the dispute if additional time is necessary to achieve a settlement.*

Thus the GMA requirement precludes the Board from varying the calendar as otherwise allowed by the APA if doing so conflicts with provisions of GMA. The GMA allows the Board to delay rendering a final order only *for the purposes of settlement by the parties*, which is not the request currently before the Board. The parties request for stay is **denied**.

Considering that the parties may have reasonably anticipated that a stay would be granted, the case calendar is modified to extend the deadline for dispositive motions and motions to supplement.

Based on the foregoing, the following order is entered:

## II. ORDER

- The parties request for stay is **denied**.
- The following case schedule shall be in effect:

August 15, 2016	Petition Filed
August 24, 2016	Notice of Hearing and Preliminary Schedule
September 12, 2016	Prehearing Conference
September 12, 2016	Respondent's Index received
September 13, 2016	Prehearing Order
September 21, 2016	Additions to Index (Petitioner) optional
October 12, 2016	Deadline for Dispositive Motions and for Motions to Supplement the Record (proposed supplements to be attached)
October 22, 2016	Deadline for Response to Dispositive Motions or Motions to Supplement the Record
October 31, 2016	Anticipated date of Order on Motions

November 14, 2016	Deadline for Petitioner's Prehearing Brief (with exhibits)
December 12, 2016	Deadline for Respondent's Prehearing Brief (with exhibits)
December 27, 2016	Deadline for Petitioner's Reply Brief (optional)
<b>January 11, 2017 10:00 AM</b>	<b>Hearing on Merits of Petition</b> Location to be determined
<b>February 13, 2017</b>	<b>Final Decision and Order Deadline</b>

DATED this 7th day of October, 2016.

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Cheryl Pflug, Presiding Officer